

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Wulforst et al.
Serial Number: 09/940,744
Filed: August 28, 2001
For: Animal Bed
Group Art Unit: 3463
Examiner: Joan M. Olszewski

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

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BRIEF ON APPEAL UNDER 37 CFR 1.192

Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal filed on or about January 9, 2004 from the Final Office Action dated October 14, 2003.

I. REAL PARTY IN INTEREST

The above-referenced application is the subject of an assignment to Milliken & Company, located at 920 Milliken Road, Spartanburg, South Carolina, which is the real party in interest.

II. RELATED APPEALS & INTERFERENCES

Patent Application Serial No. 10/207,519 (also assigned to Milliken & Company) filed on July 29, 2002, is also under appeal.

III. STATUS OF CLAIMS

Claims 1-14 have been rejected and are the subject of this Appeal.

IV. STATUS OF AMENDMENTS

No Amendments were filed after the Final Office Action.

V. SUMMARY OF THE INVENTION

The subject application is related to bedding articles for animals, and in particular, to bedding articles for odor control.

Claim 1 is directed to an animal bed comprising a removable encasing and a cushioning core. The removable encasing has a top surface and a bottom surface, a face textile with an exterior surface and an interior surface, and an odor receiving layer permanently disposed on the interior surface of the face textile in a configuration that covers at least the entire top surface of the removable encasing. The cushioning core is located adjacent to the odor receiving layer. The features of claim 1 are described, for example, in the specification on pages 1 (lines 20-26), 2 (lines 16-19), and 4 (lines 17-21). The features are also shown in Figures 1, 2 and 3.

Claim 2 depends from Claim 1 and is directed to an animal bed encasing wherein the odor receiving layer comprises an absorbing agent. The features of Claim 2 are described, for example, in the specification on page 3 (lines 9-11).

Claim 3 depends from Claim 1 and is directed to an animal bed encasing wherein the odor receiving layer comprises an adsorbing agent. The features of Claim 3 are described, for example, in the specification on page 3 (lines 9-11).

Claim 4 depends from Claim 3 and is directed to an odor adsorbing agent comprised of activated charcoal. The features of Claim 4 are described, for example, in the specification on page 3 (lines 17-19).

Claim 5 depends from Claim 4 and is directed to activated charcoal with about a 100 x 150 particle screened size that is distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. The features of Claim 5 are described, for example, in the specification on page 3 (lines 28-30) and page 4 (lines 1-2).

Claim 6 depends from Claim 4 and is directed to an odor receiving layer that includes an adhesive. The features of Claim 6 are described, for example, in the specification on page 4 (lines 3-16).

Claim 7 depends from Claim 6 and is directed to an adhesive comprising a hot melt adhesive. The features of Claim 7 are described, for example, in the specification on page 4 (lines 3-5).

Claim 8 depends from Claim 7 and is directed to hot melt adhesive that is a film securing the activated charcoal against the interior surface of the textile. The features of Claim 8 are described, for example, in the specification on page 4 (lines 5-16).

Claim 9 depends from Claim 1 and is directed to a backing material disposed adjacent to the odor adsorbing layer. The features of Claim 9 are described, for example, in the specification on page 4 (lines 22-25) and in Figure 4 of the drawings.

Claim 10 depends from Claim 9 and is directed to a backing material comprised of a backing textile. The features of Claim 10 are described, for example, in the specification on page 4 (lines 26-28).

Claim 11 depends from Claim 10 and is directed to a backing textile comprised of a point bonded nonwoven material. The features of Claim 11 are described, for example, in the specification on page 4 (lines 28-29) and page 5 (lines 1-2).

Claim 12 depends from Claim 9 and is directed to a backing material comprised of a film. The features of Claim 12 are described, for example, in the specification on page 5 (lines 3-4).

Claim 13 depends from Claim 1 and is directed to a backing material comprised of a low density polyester film. The features of Claim 13 are described, for example, in the specification on page 5 (lines 3-4).

Claim 14 is directed to an animal bed comprised of a removable encasing and a cushioning core. The removable encasing has a top surface and a bottom surface, a face textile with an exterior surface and an interior surface, and an odor receiving layer permanently disposed on the interior surface of the face textile in a configuration that covers at least the entire top surface of the removable encasing. The odor receiving layer includes activated charcoal, adhesive, and a backing material disposed adjacent to the odor receiving layer. The cushioning core is located adjacent to the odor receiving layer. The features of Claim 14 are described, for example, in the specification on pages 1 (lines 20-26), 2 (lines 16-19), 3 (lines 17-19), and 4 (lines 3-16, 17-21 and 22-25). The features are also shown in Figures 1 through 4.

VI. ISSUES

At issue in the present Appeal are:

- (A) Whether Claims 1-14 are properly rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims in co-pending Patent Application Serial No. 10/207,519 in view of Denesuk et al. (US Patent No. 6,196,156), Ryan et al. (US Patent No. 5,019,062), and Sesselmann (US Patent No. 5,539,930).
- (B) Whether Claims 1-4, 6 and 9-14 are properly rejected under 35 USC 103(a) as being unpatentable over Sesselmann (US Patent No. 5,539,930) in view of Denesuk et al. (US Patent No. 6,196,156).
- (C) Whether Claim 5 is properly rejected under 35 USC 103(a) as being unpatentable over Sesselmann as modified by Denesuk et al. as applied to Claims 1-4 and further in view of Ryan et al. (US Patent No. 5,019,062).

- (D) Whether Claims 7 and 8 are properly rejected under 35 USC 103(a) as being unpatentable over the combination of Sesselmann as modified by Denesuk et al. as applied to Claims 1-4 and further in view of Giglia (US Patent No. 4,459,332).

VII. GROUPING OF CLAIMS

Appellant respectfully submits that all of the claims stand together.

VIII. ARGUMENT

- (A) Whether Claims 1-14 are properly rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims in co-pending Patent Application Serial No. 10/207,519 in view of Denesuk et al. (US Patent No. 6,196,156), Ryan et al. (US Patent No. 5,019,062), and Sesselmann (US Patent No. 5,539,930).**

The Office has provisionally rejected Claims 1-4, 6-11 and 14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 17, 19, 20 and 23-25 of co-pending Patent Application Serial No. 10/207,519 in view of Denesuk et al. (US Patent No. 6,196,156).

The Office's argument with respect to this rejection is as follows:

The device as set forth in the above identified claims of copending application 10/207519 sets forth all of the features claimed except for the cushioning core being removable from the outer encasing. Denesuk et al. show a removable outer encasing (12) having an inner filling (14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device as represented by claims 1, 2, 17, 19, 20 and 23-25 of the copending application 10/207519 by utilizing a removable outer encasing with an inner filling inside as taught by Denesuk

et al. in order to provide an opportunity to launder the outer encasing and if need be replace the inner cushioning filler or core.

The Office has provisionally rejected Claim 5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 17, 19, 20 and 23-25 of co-pending Patent Application Serial No. 10/207,519 in view of Denesuk et al. (US Patent No. 6,196,156) and further in view of Ryan et al. (US Patent No. 5,019,062).

The Office's argument with respect to this rejection is as follows:

The device as set forth by copending application 10/207519 in claims 1, 2, 17, 19, 20 and 23-25 as modified in the rejection above teaches everything except for the activated charcoal having about a 100 x 150 particle screened size and distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. However, Ryan et al. disclose a similar field of endeavor of odor control agents, a material with an odor layer of activated charcoal which has a particle size of 2-4 microns (Column 3, lines 48-52) and is applied at about 3 mg per sq. cm which is about 1 ounce per sq. yard (column 4, lines 19-31) and is considered to meet the range of "about 1.5 ounces per square yard to about 3 ounces per square yard." Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device as represented by claims 1, 2, 17, 19, 20 and 23-25 of the copending Application No. 10/207519 as modified by Denesuk et al. in the rejection above to include a micron particle size activated charcoal distributed at the claimed rate of about 1.5 ounces per square yard to about 3 ounces per square yard as taught by Ryan et al. for the purposes of providing the optimum size and distribution of the odor agents to adsorb odor. Further, although Ryan et al. do not specifically disclose a 100 x 150 particle screened size, a small particulate composition is disclosed and it would have been obvious to change the particle size in order to achieve an optimum particle size and range for adsorbing the odor.

The Office has provisionally rejected Claims 12 and 13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 17, 19, 20 and 23-25 of co-pending Patent Application Serial No. 10/207,519 in view of Denesuk et al. (US Patent No. 6,196,156) and Sesselmann (US Patent No. 5,539,930).

The Office's argument with respect to this rejection is as follows:

The combination of the identified claims of Applicant's copending application and Denesuk et al. shows all of the features claimed except for the backing material being formed as a film. However, Sesselmann shows a backing material (32) being formed as a film (column 4, line 40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of the identified claims of Applicant's copending application and Denesuk et al. to include a backing material being formed as a film as taught by Sesselmann in order to provide uniform coverage and strength to the material and a waterproofing to protect the inner cushion.

Appellant has stated, in the Response filed on September 22, 2003, that it is willing to file a terminal disclaimer with regard to copending Patent Application Serial No. 10/207,519 once all other issues of patentability have been resolved. The Office acknowledged this willingness in the Final Office Action dated October 14, 2003.

(B) Whether Claims 1-4, 6 and 9-14 are properly rejected under 35 USC 103(a) as being unpatentable over Sesselmann (US Patent No. 5,539,930) in view of Denesuk et al. (US Patent No. 6,196,156).

The Office has rejected Claims 1-4, 6, and 9-14 as being unpatentable under 35 USC 103(a) over Sesselmann (US Patent No. 5,539,930) in view of Denesuk et al. (US Patent No. 6,196,156).

Sesselmann is directed to accessory storage packs and articles of clothing (Abstract), while Denesuk et al. is directed to a bedding article for a domestic animal (Abstract).

More specifically, Sesselmann discloses an accessory storage pack (such as a fanny pack, backpack, or duffel bag) adapted to enclose various articles of clothing (column 2, lines 37-40 and Figures 6-8) and an article of clothing 28 having an inner layer 30, a means for absorbing odors 34 and an outer layer 32 (Figure 2). The means for absorbing odors 34 may include

activated charcoal as the odor absorbing substance (column 5, lines 5-9). The odor absorbing means 34 may be bonded to a first surface 42, which is preferably the outer surface of base material 40 (Figure 4). The inner layer 30 and outer layer 32 may be in the form of a needled nonwoven polyester fabric (column 4, lines 51-54)

Denesuk et al. teach a bedding article 10 having a removable outer casing 12, an inner filling 14 and a microbe-inhibiting agent 16 (column 9, lines 31-33 and Figures 1 and 3). The outer casing 12 is preferably a polyester or acrylic fabric and may include microbe-inhibiting chemicals (column 9, lines 35-38). A microbe-inhibiting lining 18 may be used in addition to the microbe-inhibiting cover 12 (column 9, lines 44-46 and Figure 4). The microbe-inhibiting agent may be incorporated into a fiber or a foam (column 13, lines 24-26 and column 14, lines 53-56), or it may be added to the fabric of the bedding article by spraying or padding (column 14, lines 40-45).

It is specifically acknowledged by the Office that Sesselmann fails to teach an animal bed with a cushioning core. Thus, the Office combines the teachings of Sesselmann with Denesuk et al. to reject Claims 1-4, 6, and 9-14.

The Office's argument with regard to Appellant's Claims 1-4, 6, and 9-14 is as follows:

Sesselmann discloses a removable encasing (Figure 8) having a top surface and a bottom surface, a face textile (30) with an exterior surface and an interior surface, and an odor receiving layer (34) permanently disposed on the interior surface of the face textile in a configuration that covers at least the entire top surface (Figure 1); wherein the odor receiving layer has an adsorbing or absorbing agent of activated charcoal (column 5, lines 1-9) and this layer of material is held in place by an adhesive (column 5, lines 3-9); a needled nonwoven material of low density polyester (column 4, line 52) backing material (32) disposed adjacent to the odor adsorbing layer (Figure 2) and the backing material comprising a film (column 4, line 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Sesselmann device by using the fabric to removably cover an inner cushion as taught by Denesuk et al. since

both devices deal with fabrics for reducing odor and this would only require substituting one well known material for another.

Appellant believes it to be well-established that a proper reference must be within the field of the inventor's endeavor, and also must be reasonably pertinent to the inventor's problem.

"...the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve. If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection. An inventor may well have been motivated to consider the reference when making his invention. If it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it." *In re Clay*, 966 F.2d 656, 23 USPQ2d 1767 (Fed. Cir. 1992).

"[I]t is necessary to consider the 'reality of the circumstances',...-- in other words, common sense -- in deciding in which field a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor... The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness." *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Appellant respectfully believes that the rejection of Claims 1-4, 6, and 9-14 under 35 § 103(a) as being unpatentable over Sesselmann (US Patent No. 5,539,930) in view of Denesuk et al. (6,196,156) is in error and should be withdrawn on the grounds that the rejection is based on improper hindsight relying upon the present application as a necessary motivation or suggestion for combining such references. Since obviousness should be tested by "what the combined teachings of the references would have suggested to those of ordinary skill in the art" *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981), it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination" *ACS Hosp. Sys.*, 732 F.2d at 1577, 221 USPQ at 933. Furthermore, "teachings of references can be combined only if there is some suggestion

or incentive to do so.” *Id.* Applicants respectfully submit that, in this case, the prior art contains none. Instead, the Office relies on hindsight in reaching the obviousness determination.

Appellant’s claim 1 is directed to an animal bed comprising a removable encasing and a cushioning core. The primary reference, Sesselmann, is directed to accessory storage packs and articles of clothing. The problem addressed by Appellant’s invention is controlling odors generated on the *outside* of the animal bed, while the problem addressed by Sesselmann is controlling odors generated by a person wearing the articles of clothing, i.e. controlling odors generated from *within* the articles of clothing. There is no suggestion provided by Sesselmann to take an odor absorbing article of clothing and combine it with a cushion to form an odor absorbing animal bed. Additionally, there is no teaching or suggestion from Sesselmann to cover a cushion with an odor absorbing article of clothing to form the odor absorbing enclosure for an animal bed. The mere possibility that Sesselmann may be modified does not make a claimed invention obvious unless Sesselmann suggests such a modification.

Appellant further submits that the Office’s reliance on Denesuk et al. to overcome the shortcomings of Sesselmann is misplaced, for the reasons set forth below.

A stated objective and purpose of Appellant’s invention, creating an odor absorbing animal bed, is not an objective or purpose associated with the teachings of Denesuk et al. Rather, the stated objective and purpose of Denesuk et al. is to provide a microbe-inhibiting bedding article for domestic animals which inhibits the proliferation of bacteria, viruses, germs, mold, mildew, fungi, allergens, etc. (column 1, lines 11-18). Denesuk et al. focus on this microbe-inhibiting feature and further distinguish the meaning of the term “microbe-inhibiting” by defining “microbe-cidal,” “microbe-starving,” and “microbe-impenetrable” (column 4, lines 54-67 and column 5, lines 38). Denesuk et al. also disclose a variety of microbe-inhibiting agents which may be used as additives in polymers or as a liquid treatment (column 17, lines 24-63) in order to create the microbe-inhibiting bedding article. Clearly, then, one of ordinary skill in the art would not find a solution to the problem of odor control from the teachings of Denesuk et al., since Denesuk et al. focus on finding a solution for creating a bedding article that inhibits the growth of bacteria, viruses, germs, mold, mildew, fungi, allergens, etc.

For the reasons set forth above, Appellant respectfully asserts that Denesuk et al. is not pertinent to the problem of creating an odor absorbing animal bed, a problem clearly addressed

by Appellant's invention. Therefore, Appellant believes there is no reasonable basis for concluding that Denesuk et al. would have been considered by one skilled in the particular art of animal beds working on the pertinent problem of controlling odors emitted from such animal beds.

Thus, Appellant respectfully asserts that neither Sesselmann nor Denesuk et al. provide the necessary motivation or suggestion for combination. Modification of the primary Sesselmann reference in light of the disclosure of Denesuk et al. does not provide reasonable motive for a person trying to control odors that are generated *outside* of an animal bed to look to art trying to eliminate odors generated from *within* an article of clothing or trying to inhibit the growth of bacteria on a bedding article. Neither reference discloses the present invention, either alone or in combination.

(C) Whether Claim 5 is properly rejected under 35 USC 103(a) as being unpatentable over Sesselmann as modified by Denesuk et al. as applied to Claims 1-4 above and further in view of Ryan et al. (US Patent No. 5,019,062).

The Office has rejected Claim 5 as being unpatentable under 35 USC 103(a) over Sesselmann as modified by Denesuk et al. as applied to Claims 1-4 above and further in view of Ryan et al. (US Patent No. 5,019,062).

Sesselmann is directed to accessory storage packs and articles of clothing (Abstract); Denesuk et al. is directed to a bedding article for a domestic animal (Abstract); and Ryan et al. is directed to bicomponent materials for use as feminine hygiene articles and diapers (column 2, lines 49-65).

Appellant relies upon the previously presented discussion of the features of Sesselmann and Denesuk et al. With regard to Ryan et al., the reference discloses a bicomponent material comprised of at least two laminae, a first polymeric lamina 10 and a second lamina 12, joined together to form a unitary laminate (column 2, lines 66-67 and column 3, lines 7-12 and Figure 1). The second lamina 12 provides the principal means for controlling odors (column 3, lines 36-39). A preferred adsorptive material for the second lamina 12 is activated charcoal having an average particle size of 2-4 microns (column 3, lines 48-50).

It has been specifically acknowledged by the Office that Sesselmann fails to teach an animal bed with a cushioning core. It has also been acknowledged by the Office that Ryan et al. fail to teach activated charcoal having about a 100 x 150 particle screened size and a distribution on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. Thus, the Office combines the teachings of Sesselmann, Denesuk et al. and Ryan et al. to reject Claim 5.

The Office's argument with regard to Appellant's Claim 5 is as follows:

The combination of Sesselmann as modified by Denesuk et al. discloses all the claimed features as discussed in the rejections above except for the activated charcoal having about a 100 x 150 particle screened size and distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. However, Ryan et al. disclose in a similar field of endeavor of odor control agents, a material with an odor layer of activated charcoal which has a particle size of 2-4 microns (column 3, lines 48-52) and is applied at about 3 mg per sq. cm which is about 1 ounce per sq. yard (column 4, lines 19-31) and is considered to meet the range of "about 1.5 ounces per square yard to about 3 ounces per square yard."

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination device of Sesselmann and Denesuk et al. to include a micron particle size activated charcoal distributed at the claimed rate of about 1.5 ounces per square yard to about 3 ounces per square yard for the purposes of providing the optimum size and distribution of the odor agents to adsorb odor. Although Ryan et al. do not specifically disclose a 100 x 150 particle screened size, a small particulate composition is disclosed and it would have been obvious to change the particle size in order to achieve an optimum particle size and range for adsorbing the odor.

As stated previously, Appellant believes it to be well-established that a proper reference must be within the field of the inventor's endeavor, and also must be reasonably pertinent to the inventor's problem. Appellant respectfully believes that the rejection of Claim 5 under 35 § 103(a) as being unpatentable over Sesselmann in view of Denesuk et al. and further in view of Ryan et al. is in error and should be withdrawn on the grounds that the rejection is based on

improper hindsight relying upon the present application as a necessary motivation or suggestion for combining such references.

Appellant relies upon the argument presented above with regard to the merits of the combination of Sesselmann with Denesuk et al. In addition, the problem addressed by Ryan et al. is absorbing liquids which pass through the bicomponent material in a first direction and substantially preventing the transmission of gaseous malodors from passing through the bicomponent material in the opposite direction (column 2, lines 49-52). Thus, Ryan et al., like Sesselmann, also attempt to solve the problem of preventing odors that are generated from within a material from passing through the material to the outside environment. Specifically, Ryan et al. attempt to solve the problem of preventing gases, or odors, that are generated from within the bicomponent material from passing back through the bicomponent material in the opposite direction of the liquid absorption (column 3, lines 3-6). In contrast to both Sesselmann and Ryan et al., the problem addressed by Appellant's invention is controlling odors that are generated on the outside of the animal bed.

Thus, Appellant submits that there is no reasonable motive for a person trying to control odors that are generated *outside* of an article (such as for an animal bed) to look to art trying to eliminate odors that are generated from *within* an article (such as for clothing or feminine hygiene products). The combination of such divergent fields (clothing/feminine hygiene vs. animal bedding) and the attempts by Sesselmann and Ryan et al. to solve problems that are different from Appellant's problem (controlling odors emanating from within an article vs. controlling odors generated on the outside of an article) supports Appellant's position that the Office has used improper hindsight reconstruction in order to reject Claim 5. None of the references disclose the present invention, either alone or in combination.

(D) Whether Claims 7 and 8 are properly rejected under 35 USC 103(a) as being unpatentable over the combination of Sesselmann as modified by Denesuk et al. as applied to Claims 1-4 above and further in view of Giglia (US Patent No. 4,459,332).

The Office has rejected Claims 7 and 8 as being unpatentable under 35 USC 103(a) over the combination of Sesselmann as modified by Denesuk et al. as applied to Claims 1-4 above and further in view of Giglia (US Patent No. 4,459,332).

Sesselmann is directed to accessory storage packs and articles of clothing (Abstract); Denesuk et al. is directed to a bedding article for a domestic animal (Abstract); and Giglia et al. is directed to air and water vapor permeable toxic vapor absorptive fabric material (Abstract).

Appellant relies upon the previously presented discussion of the features of Sesselmann and Denesuk et al. With regard to Giglia, the reference discloses a composite fabric comprised of two layers of adhesive material sandwiched between two layers of woven or nonwoven fabric. (Abstract). The preferred adhesive layers are provided in the form of a water vapor and air permeable, *self-adhering* foam made from such materials as rubber or acrylic latex or polyurethane (column 2, lines 1-8). After the four layers are assembled into a composite structure, the composite structure is heated in an oven to heat cure the foam adhesive (column 3, lines 1-6).

It has been specifically acknowledged by the Office that the combination of Sesselmann as modified by Denesuk et al. fails to teach the specific adhesive being a hot melt adhesive. Thus, the Office combines the teachings of Sesselmann, Denesuk et al., and Giglia to reject Claims 7 and 8.

The Office's argument with regard to Appellant's Claims 7 and 8 is as follows:

The combination of Sesselmann as modified by Denesuk et al. discloses all the claimed features as discussed in the rejections above including an adhesive for bonding the activated charcoal against the interior surface of the textile (column 5, lines 3-9 of Sesselmann). However, the combination of Sesselmann as modified by Denesuk et al. is silent about the specific adhesive being a hot melt adhesive. However, Giglia teaches the use of a hot melt adhesive (column 3, lines 1-6) for adhering materials together.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of Sesselmann as modified by Denesuk et al. by utilizing the hot melt adhesive as taught by Giglia in order to secure the activated charcoal to the interior surface of the textile for odor protection.

As stated previously, Appellant believes it to be well-established that a proper reference must be within the field of the inventor's endeavor, and also must be reasonably pertinent to the inventor's problem. Appellant respectfully believes that the rejection of Claim 5 under 35 § 103(a) as being unpatentable over Sesselmann in view of Denesuk et al. and further in view of Giglia is in error and should be withdrawn on the grounds that the rejection is based on improper hindsight relying upon the present application as a necessary motivation or suggestion for combining such references.

Appellant relies upon the argument presented above with regard to the merits of the combination of Sesselmann with Denesuk et al. In addition, Giglia uses a foam adhesive which is "self-adhering" (column 2, line 8). The foam adhesive is later cured with heat, but Giglia offers no reasons as to why the self-adhering foam requires heat curing (column 3, lines 1-6). Accordingly, since Giglia states that the foam adhesive is self-adhering and offers no explanation for the need to heat cure the foam, Appellant contends that these foam adhesives are not hot-melt adhesives similar to the hot melt adhesive films claimed by Appellant. Therefore, Appellant believes there is no teaching or suggestion by Giglia, in combination with the teachings of Sesselmann and Denesuk et al., that would lead one of ordinary skill in the art to look to this combination of references and derive Appellant's claimed invention of odor absorbing animal beds that use hot melt adhesive films.

Thus, Appellant submits that there is no reasonable motive for a person trying to control odors that are generated *outside* of an article (such as an animal bed) and utilizes hot melt adhesive films to look to art trying to eliminate odors that are generated from *within* an article (such as clothing and accessory storage packs) and utilizes self-adhering foam adhesives. The combination of such divergent fields (clothing and accessory storage packs vs. animal bedding) and the attempts by Sesselmann and Giglia to solve problems that are different from Appellant's problem (controlling odors emanating from within an article and using self-adhering foam adhesive vs. controlling odors generated on the outside of an article and using hot melt adhesive films) supports Appellant's position that the Office has used improper hindsight reconstruction in order to reject Claims 7 and 8. None of the references disclose the present invention, either alone or in combination.

IX. CONCLUSION

For the reasons set forth above, Appellant respectfully urges that the obviousness rejections of Claims 1-14 are improper. Reversal of these obviousness rejections, as presented in this Appeal, is hereby requested.

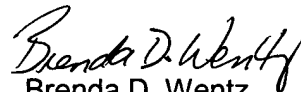
A copy of pending Claims 1-14 is attached as an Appendix hereto.

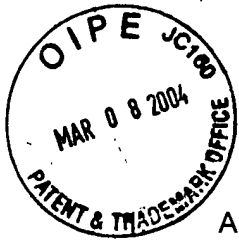
The Commissioner is hereby authorized to charge the Appeal Brief fee of \$330.00 to Deposit Account No. 04-0500. The Commissioner is also authorized to charge any additional fees that may be required, or credit any over-payment, to Deposit Account No. 04-0500. This Appeal Brief is being submitted in triplicate.

March 9, 2004

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Respectfully submitted,


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APPENDIX

- An animal bed comprising a removable encasing and a cushioning core;
said removable encasing having a top surface and a bottom surface,
a face textile with an exterior surface and an interior surface, and
an odor receiving layer permanently disposed on the interior surface of the face textile in
a configuration that covers at least the entire top surface of the removable encasing; and
said cushioning core located adjacent to the odor receiving layer permanently disposed
on the interior surface of the face textile.
2. The animal bed encasing according to Claim 1, wherein said odor receiving layer
comprises an absorbing agent.
 3. The animal bed encasing according to Claim 1, wherein said odor receiving layer
comprises an adsorbing agent.
 4. The animal bed encasing according to Claim 3, wherein said odor adsorbing agent
comprises activated charcoal.
 5. The animal bed encasing according to Claim 4, wherein said activated charcoal has a
about a 100 x 150 particle screened size, and is distributed on the interior surface of the
face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per
square yard.
 6. The animal bed encasing according to Claim 4, wherein said odor receiving layer
includes an adhesive.

7. The animal bed encasing according to Claim 6, wherein said adhesive is a hot melt adhesive.
8. The animal bed encasing according to Claim 7, wherein said hot melt adhesive is a film securing the activated charcoal against the interior surface of said textile.
9. The animal bed encasing according to Claim 1, further including a backing material disposed adjacent to the odor adsorbing layer.
10. The animal bed encasing according to Claim 9, wherein said backing material comprises a backing textile.
11. The animal bed encasing according to Claim 10, wherein the backing textile comprises a point bonded nonwoven material.
12. The animal bed encasing according to Claim 9, wherein said backing material comprises a film.
13. The animal bed encasing according to Claim 1, wherein the film of said backing material comprises a low density polyester film.
14. An animal bed comprising a removable encasing and a cushioning core; said removable encasing having a top surface and a bottom surface, a face textile with an exterior surface and an interior surface, an odor receiving layer permanently disposed on the

interior surface of the face textile in a configuration that covers at least the entire top surface of the removable encasing; said odor receiving layer including:

activated charcoal;

adhesive; and

a backing material disposed adjacent to the odor receiving layer;

and said cushioning core located adjacent to the odor receiving layer permanently disposed on the interior surface of the face textile.